

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

ALAERIC TEVON BIRGE, a minor,
by mother and next friend,
PHENIQUESKI S. MICKENS,

Plaintiff,

v.

No. 04-2531 B

DOLLAR GENERAL CORPORATION,
DOLGENCORP, INC.,
TOMMY LEE TURLEY,
JEREMY GARRETT,
COREY RICHMOND,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO STRIKE DEFENDANT DOLLAR
GENERAL CORPORATION'S OBJECTIONS TO THE REPORT & RECOMMENDATION
OF THE MAGISTRATE JUDGE

Before the Court is the January 3, 2006 motion of the Plaintiff, Alaeric Tevon Birge, a minor, by mother and next friend, Pheniqueski S. Mickens, to strike Defendant Dollar General Corporation's ("Dollar General") objections to the order of the magistrate judge denying its motion to stay the proceedings. Specifically, Plaintiff claims that the Defendant failed to object to the order within the 10-day period proscribed by Federal Rule of Civil Procedure 72(a) and, on this basis, contends that the objections should be stricken from the record.

The Court finds Plaintiff's argument to be without merit. Federal Rule of Civil Procedure 72(a) provides that "[w]ithin 10 days after being served with a copy of the magistrate judge's order, a party may serve and file objections to the order." FED. R. CIV. P. 72(a). Under Rule 6(a) of the

Federal Rules of Civil Procedure, weekends and legal holidays are excluded when computing time less than 11 days. FED. R. CIV. P. 6(a). Additionally, where service is by mail, Rule 6(e) of the Federal Rules of Civil Procedure provides for the addition of 3 days to the prescribed period. FED. R. CIV. P. 6(e). Applying these rules to the instant matter, Defendant's objections to the magistrate judge's order were timely. Magistrate Judge Tu M. Pham entered an order denying Dollar General's motion to stay the proceedings on December 15, 2005. Excluding weekends and legal holidays, and adding 3 days for mailing, objections to the order were due by January 3, 2006. Because Defendant's objections were filed on December 30, 2005, the filing was timely. Accordingly, Plaintiff's motion to strike Defendant's objections as untimely is DENIED.

IT IS SO ORDERED this 4th day of January, 2006.

s/ J. DANIEL BREEN
UNITED STATES DISTRICT JUDGE